

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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to: Holly McCann
Chief, Excise Tax Program

from: Frank Boland,
Chief, Branch 7
Office of Associate Chief Counsel
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subject: Penalties for multiple violations of dyed diesel rules under § 6715

This Chief Counsel Advice responds to your request for assistance for non-taxpayer specific legal advice. This advice may not be used or cited as precedent.

ISSUE

Whether a taxpayer can be assessed under the multiple violation rules of § 6715(b)(2) of the Internal Revenue Code for multiple § 6715 violations if the taxpayer has converted from a corporation to a limited liability company (LLC) and has changed its name and employer identification number (EIN).

CONCLUSION

A taxpayer cannot avoid the multiple violations rules under § 6715(b)(2) by converting from a corporation to an LLC and changing its name and EIN.

FACTS

A corporation was assessed one or more penalties under § 6715 while operating under a particular name and EIN. Later, the owners of the corporation converted the business to an LLC, changed the suffix in its name from "Inc." to "LLC" and got a new EIN. The "new" business is operated at the same location doing the same type of business with the same equipment, phone number, and employees. If the IRS assesses a penalty

under § 6715(b)(1)(A) against the LLC, you want to know if the prior penalties of the corporation should be considered for purposes of § 6715(b)(2). For purposes of this memorandum, we assume that the business was required to get a new EIN due to an entity classification change rather than electing to be treated as a corporation such that it reorganized under § 368(a)(1)(F), which would require the taxpayer to continue to use the same EIN under these facts.

LAW AND ANALYSIS

Section 4081 imposes a tax on certain removals, entries, and sales of diesel fuel and kerosene (fuel). Section 4082 exempts from tax fuel that is dyed under prescribed specifications.

Section 6715(a) generally imposes a penalty on the misuse of dyed fuel.

Under § 6715(b)(1), the amount of the § 6715 penalty on each act is the greater of (A) \$1,000, or (B) \$10 for each gallon of the dyed fuel involved. Section 6715(b)(2), however, increases the \$1,000 penalty by the product of such amount and the number of prior penalties (if any) imposed by § 6715 on such person *(or a related person or any predecessor of such person or related person)* (emphasis added).

According to the facts submitted, the taxpayer merely converted from a corporation to a limited liability company. Depending on the particular circumstances, this may require a taxpayer to obtain a new EIN and to change the suffix in its name from “Inc.” to “LLC.” In any event, the taxpayer did both. It is clear that to the extent a “new taxpayer” was created by this conversion, the pre-conversion corporation was its predecessor. Therefore, those prior penalties may be attributed to the taxpayer and used in calculating the amount of the § 6715(b)(1)(A) penalty.

Neither the Code nor the regulations define “related person” or “predecessor” for purposes of this penalty. We therefore look to other parts of the Code and regulations for suggestions on how to define these terms. For example, § 48.4219-1(a) of the Manufacturers and Retailers Excise Tax Regulations provides examples of persons that are successors to manufacturers for purposes of the manufacturers tax and § 48.4101-1(b)(5) defines “related person” for purposes of the qualifications for applicants for registration for purposes of the taxes on taxable fuel. You may use these and similar factors to determine whether a person is a “predecessor” or related person.”

Please call (202) 622-3130 if you have any further questions.